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File No.

Collection No.

1939.

Resident to Office
Bangalore

Pros. Serial Nos. 1–3

(K)

Subject.

Petition from Abdul Mnaff for
Remission of Sentence.

Previous References.

1365/36.

Later References.

S. 97.—(Blue).

NOTES AND PRECIS.

1

This is a petition under section 401 of the Code of Criminal Procedure for remission of the un-expired portion of the sentence of 3 months' rigorous imprisonment imposed on Abdul Munaff, for an offence of robbery punishable under section 392 of the Indian Penal Code, for having waylaid P.W.1 at about 10.15 P.M. on Armstrong Road and relieved him of Rs.7/- and odd, a money purse and a cigarette case by use of force. The Magistrate sentenced the accused to 1 year's rigorous and a fine of Rs.100/-; the Sessions Judge considered this excessive and reduced the sentence to 3 months' rigorous imprisonment; the Additional Judge in revision considered the sentence moderate and rejected the petition.

Please see the judgment of the learned Sessions Judge. He observes in para 7 that the accused committed robbery not for the sake of a few rupees, but that the incident was the outcome of the "exuberance of his youth and animal spirits by indulging in a little horse-play ---". He rightly concludes that it is the duty of the State to protect Society from incidents which are the outcome of such animal spirits as much as from incidents which are the outcome of a guilty intention of causing wrongful loss to another. A difference will arise so far as the Penal laws go only as regards the measure of punishment. The learned Additional Judge has observed that a sentence of 3 months is moderate.

The petitioner harbours a grievance that his petition in the Court of the Resident was not as usual posted for admission at a regular sitting. He has to thank himself for it. Petitions filed here in Office are posted for admission or hearing, as the case may

be, during the next sittings of the Judge. Because the petitioner wanted immediate bail, his Advocate seems to have proceeded to Chittoor and presented the main revision petition and the petition for bail before the Additional Judge. On a perusal of the papers and perhaps after hearing the Advocate, the learned Judge passed orders rejecting the petitions. It is not clear what more he would have urged in Bangalore which he did not urge in Chittoor.

4 Submitted for orders. Draft is for approval if it is decided to reject the petition.

Trial Court judgment of (1) PSRao 17.9.39

(from page 1)

Secretary.

5. To allow this petition for many amounts to disagreeing with the addl. Judge that the punishment of 3 months is moderate. The accused robbed the complainant by force at midnight when there was no one about, & I do not think that either the fact that he is the son of a rich man, nor that he was drunk, is any mitigation of the offence. Petition may be rejected.

H Venkoba Rao
19/9/39.

Accident 6. Presumably the Addl Judge was chiefly concerned with the question as to whether there was a miscarriage of justice which it was essential to interfere with the discretion

called let me know how he would have treated this case had it come before him as a Sessions Judge.

Sd/ [illegible]

Addl Judge

7. As the Hon'ble the Sessions has said, my dismissal of the CRP only means that I did not find sufficient reason to interfere with the discretion of the Sessions Judge.

The sentence to ~~pay~~ Rs 3 not Rs 1. is a light punishment for rotting; but in view of the fact that the taking of the cigarette case and the money from the complainant was only a youthful escapade, and a breach of good manners rather than a crime, I would have sentenced the accused only to 2-4 weeks imprisonment had I been hearing the appeal.

Sessions

8. I take it that habitual has been omitted after August. In view of this I feel that the Sessions Court would have treated accused as a first offender

possible the remarks of the additional Judge above. The unsuitable nature of the Sentence may be remitted. A carefully worded order may kindly be sent up.

29/9/39.

9. Under section 401 of the Code Resident may at any time without conditions or upon any condition which the person sentenced accepts remit the whole or any part of the punishment.

10. Please see the order of remission with certain conditions passed in the case of one Thiripigadu in 1936. But that was a case of transportation for life.

(13) × Corr. p. 6 F.1365-36

11. In view of the observation of the learned Additic-al Judge that if he heard the case as Sessions Judge he would have awarded a sentence of 2 to 4 weeks, perhaps it is not necessary to impose any conditions such as the petitioner reporting his residence to the police or reporting himself periodically to the police during the 2 months that his sentence would have run.

12. A draft is submitted for approval.

ASRa 23.9.39

29/9/39.

13. Approved

26/9

S.N. (2) issue.

Secretary.

Resident.

Record ASRa

Dy.No. 11636 S.N. 3

14. Please see sections 74 and 76 of the Evidence Act. Copies applied for may be granted. For orders.

ASPa.
22.11.39

Secretary 15. Grant copy.

granted.

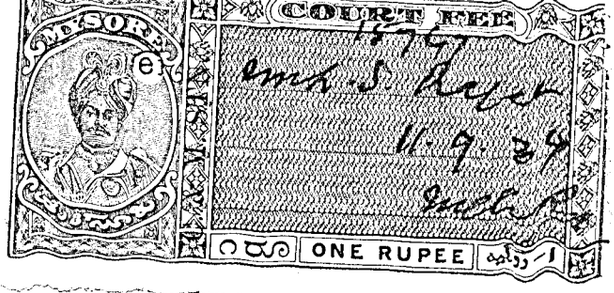
16. 2/. The man thus out to be a notorious rowdy, previously bound over under the Cr. P.C., the period of the bond not having expired. He is now being tried, because this conviction proves that he has broken the previous bond. I am sorry that no reference was made to D.17. This is an error. No case must come up under 401 Cr PC in future without previous reference to D.17. after issue of copy. Resident may see this note. We were also misled by the remark of the Senior Judge that he 'would have treated the accused as a first offender'.

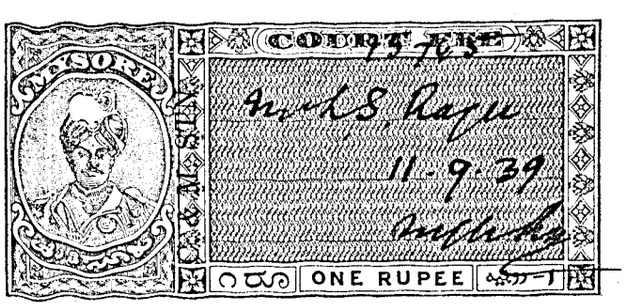
Supplementary list to be prepared.

Record Bo

22/11/39

CORRESPONDENCE.





BEFORE THE HONOURABLE THE BRITISH

RESIDENT IN MYSORE,

C. & M. Station, Bangalore.

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
11 SEP
Diary No. 9454
File No.

No. of 1939.

PETITIONER. :-

Abdul Muhaff.
c/o The Superintendent,
Central Jail,
Bangalore.

-:Versus:-

COUNTER-PETITIONER. :-

King - Emperor.

Under Section 401, Criminal Procedure Code, the Petitioner respectfully begs to state as follows. :-

1) The Petitioner is the son of one D. Syed Hasham, Proprietor of D. Syed Oosman & Co., Merchants, C. & M. Station, Bangalore. He comes of a respectable and well-known family in C. & M. Station.

2) On 30th June 1939 the Petitioner was convicted in C.C. No. 697/38 by the District Munsiff - Magistrate, C. & M. Station, - Bangalore, on his file for an alleged offence under Section 392, Indian Penal Code and - sentenced

sentenc to one year's R.I. and a fine of Rs 100/-.

3) The case against the Petitioner was that he with three others (the Petitioner being the first accused and the others - being accused 2, 3 and 4) removed from the possession of Pw. 1 in the case at about 10.15 P.M. on 12th August 1938 a money - purse containing Rs 7/-, a nickel-plated cigarette case and a change of seven annas and six pies.

4) The Prosecution itself suggests that the Petitioner was drunk at the time.

5) The Petitioner appealed to the learned Sessions Judge, C. & M. Station, Bangalore in Criminal Appeal No. 14/39 on his file and in his Judgment dated 28th August 39 the learned Sessions Judge while confirming his conviction, was pleased to reduce the sentence to three months R. I.

6) The learned Sessions Judge holds that the only evidence on which the Prosecution case should stand or fall is that of Pw.1 only which stood uncorroborated. He has as a matter of fact acquitted accused 3 and 4 and also reduced the sentence of A.2 to the period sufferred, thus A.2, A.3 and A.4 have all been released.

7) In Paragraph 7 of his Judgment the learned Sessions Judge has been pleased to observe as follows. :-

" It seems that there has been a - certain

certain amount of exaggeration regarding the gravity of the offence actually committed. A.1 has been proved to be the son of a rich man and the Public Prosecutor admits - that he is the sone of one of the affluent merchants of the town. It seems to me that A.1 with plenty of money and with no work has given - went to the exuberance of his youth and animal spirits by indulging in a little horseplay while returning from the Paristan Park at the expense of Pw. 1. His deeds no doubt technically amount to an offence of robbery but it seems to me to be more the outcome of mischievous mood than the act of a criminal. Pw. 1 himself admits that he would not taken any notice of the occurrence if the accused had only taken a rupee or two and returned him the balance. It cannot and was not in fact seriously contended that A.1 committed - robbery for the sake of a few rupees but nevertheless incidents and actions like this cannot be tolerated or - lightly brushed aside. A sentence of fine will be more a sentence on the father than a punishment for the accused persons and much as I wish to make use of the provisions of - Section 562, Cr.P.C. and make the - accused persons to enter into a bond with a proper security, I find it

impossible

impossible to apply that Section as the accused persons are more than - 21 years and the offence of robbery is ~~xxx~~ punishable with a sentence of more than 7 years rigorous imprisonment. A sentence of whipping may be too - drastic and I have therefore no other alternative but to agree with the - learned Magistrate and sentence the - accused persons to rigorous imprisonment. I however think that the sentence passed by the learned Magistrate is excessive and accordingly - reduce the same to three months R.I. to the first accused."

The Petitioner respectfully begs to bring to the kind notice and favourable consideration of the local Government the - above observations of the learned Sessions Judge especially the portion where he is inclined to hold that the Petitioner's deeds are not those of a Criminal but - only appear to be more the outcome of 'mischievous mood'.

8) The learned Sessions Judge himself has been anxious to use if it permitted him the provisions of Section 562, Criminal Procedure Code.

9) The Petitioner filed a Revision - Petition before the Additional Judge of the Hon'ble the Resident's Court. It is unfortunate that the petition was not --

posted

posted for admission at least and then disposed off on merits after hearing - the Petitioner's Counsel. The Petitioner's Advocate appears to have filed the same at Chittoor and there was no - opportunity for a refular hearing of the petition which appears to have been rejected summarily without being as usual and in accordance with the practice of the -- Hon'ble the Resident's Court posted for - admission at a regular sitting. This has caused great hardship on the Petitioner and necessitated the Petitioner to - invoke the aid of the provisions of Section 401, Criminal Procedure Code.

10) The Petitioner takes this opportunity of expressing his regret for the - acts alleged to have been committed on 12th August 1938 and for which he is profoundly and sincerely sorry. As the - learned Sessions Judge has been pleased to observe the same is the outcome of a mischievous drunken mood and the Petitioner herein assures the Local Government - coming as he does of a very respectable and affluent family in C. & M. Station, Bangalore, that he will give no room for similar things hereafter. His father, Mr. D. Syed Hasham who pays income-tax of Rs 5000/- years to the local Government will if necessary give the necessary - undertakings in this behalf.

11) The Petitioner has already sufferred by this time 15 days' R. I. and he most

most respectfully prays that the Local - Government may be pleased to remit the rest of the punishment or at least in the alternative suspend the same on such conditions or terms as the Local Government deem fit, for which act of mercy and kindness the - Petitioner will ever feel grateful.

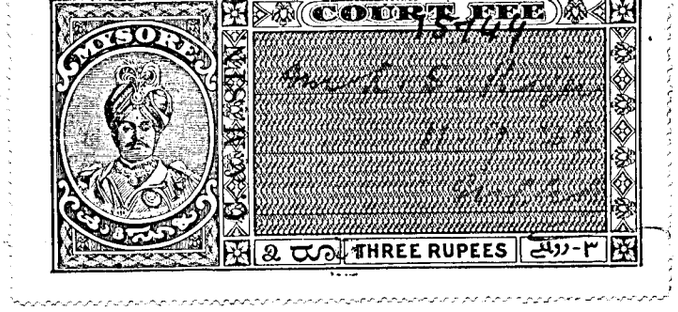
Signed before me

Chief Jailor, 11/9/
Central Jail,
Bangalore.

Petitioner.

Advocate for Petitioner.

Bangalore,
Dated Sept. 39.



BEFORE THE

~~In the Court of the~~ Hon'ble The British Resident in Mysore

CIVIL AND MILITARY STATION, BANGALORE.

No. OF 1939.

~~Plaintiff~~, *Petitioner*, ~~Appellant~~. ~~Defendant~~, *Counter-Petitioner*, ~~Respondent~~.

Abdul Munaf. } **Vs.** { Rex.

1. I the Petitioner above named do by these presents retain **Mr. L. S. RAJU, M.A., *(Hons.)*, B.L., Advocate, Lakshmi Sthanam, Kasi Visveswar Temple Lane, Bangalore City,** and Mr. G.R. Doreswamy, B.A., B.L., Advocate, Bangalore City,

to appear in and conduct the above case on my behalf to judgment.

2. I further empower him to execute any decree or order that may be passed in my behalf and to receive from Court such sums of money as I may be entitled to get and to grant receipts therefor.

3. I also undertake to confirm and ratify all the legal acts done by the said Advocate in so doing.

Accepted

G. R. Doreswamy

Advocate for Petitioner.

(Sd) Syed Munaff.
prisoner no: 4757.

Signed before me
Chief Jailor, 8/9/
Central Jail,
Bangalore.
8/9/39.

Dated 11. 9. 39

Signed before me

Dated

BEFORE THE

~~In the Court of the~~ Hon'ble the Britis h
Resident in Mysore,

CIVIL AND MILITARY STATION
BANGALORE

No. *of 19* 39.

~~*Plaintiff*~~
~~*Appellant*~~
Petitioner

Abdul Munaff.

Vs.

~~*Defendant*~~
~~*Respondent*~~
Counter-petitioner

Rex.

Files **VAKALET**

Bangalore,

Dated September 39.

L. S. RAJU, M.A. (HONS.), B.L.,
Advocate for Petitioner.

BEFORE THE HONOURABLE THE BRITISH

RESIDENT IN M Y S O R E .

C. & M. Station, B a n g a l o r e

No. of 39.

PETITIONER. :-

Abdul Munaff.

Vs.

COUNTER-PETITIONER. :-

King - Emperor.

Files Petition under Section 401, Criminal Procedure Code.

Bangalore,
Dated 11th September 39.

L.S. Raju, M.A., Hons., B.L.,

Advocate for Petitioner.

Issued 26/9/39 Issue today 26/9

R.Dis.No.F.573-39 Judl. Dated 26th Sept. 1939

Proceedings of the Hon'ble the Resident.

Read:-

Petition under section 401 of the Code of Criminal Procedure, 1898, as applied to the Civil and Military Station, Bangalore, for a remission of the unexpired portion of the sentence imposed on Abdul Munaff.

Order.

In exercise of the powers conferred by section 401 of the Code of Criminal Procedure, 1898, as applied to the Civil and Military Station of Bangalore, the Hon'ble the Resident is pleased to remit the unexpired portion of the sentence imposed on Abdul Munaff by the Sessions Judge Civil and Military Station, Bangalore, in Criminal Appeal No.14 of 1939 on his file.

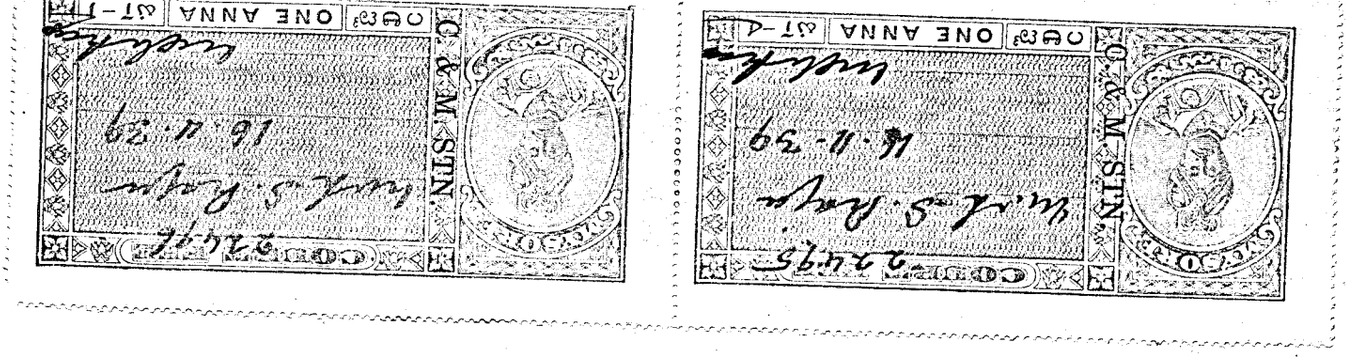
Secretary to the Resident.

To The Superintendent, Central Jail, Bangalore.

Abdul Munaff, Convict No.4750, Central Jail, Bangalore, through the Superintendent, Central Jail, Bangalore.

The Sessions Judge, Civil & Military Station, Bangalore.

ASR 23.9.39



D.D. 26-9-1939.

BEFORE THE HON'BLE THE BRITISH RESIDENT IN MYSORE,

C. & M. STATION, BANGALORE.

Petitioner:-

Abdul Munaff

- Vs -

C.-Petitioner:-

King-Emperor

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
17 NOV. 1939
Diary No. 11,636
File No.....

Copy Application

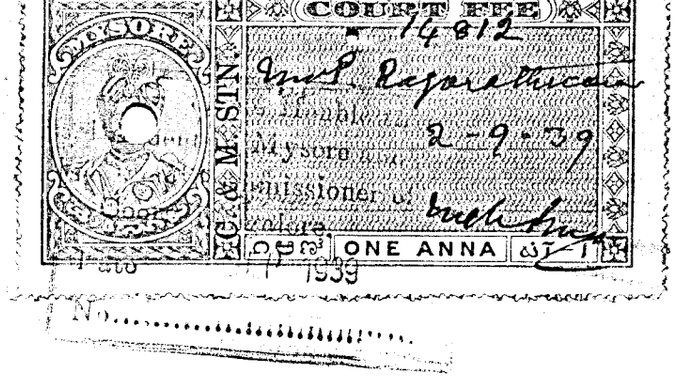
The Petitioner prays for a copy of the order passed by the Local Government on his petition under Section 401, Cr.P.C., and also a certified copy of the petition filed by him under the aforesaid Section.

Bangalore,

Dated 16-11-1939.

Advocate for
Petitioner.

Rec'd copies
27.11.39



No. 55

2.9.39

In the Court of the Hon. Assistant Commissioner Bangalore

Criminal Miscellaneous petition No. 5 of 1939

Petitioner: Abdul Rahman

vs

Accused: King Emperor.

The petitioner prays for a copy of the order in the above petition.

Bangalore 2-9-39

C. Rajamanickam
Adv. for Petitioner.